LODGING

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No. 129, Original

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

STATE OF MARYLAND,

Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

LODGING APPENDIX
ORIGINAL DECLARATIONS

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DECLARATION OF CHARLIE C. CROWDER, JR.

I, Charlie C. Crowder, Jr., declare that the following facts are true:

1. I am an adult over 18 years of age, am of sound mind, and have personal knowledge of the facts stated in this Declaration. I am the General Manager for the Fairfax County Water Authority. I have extensive experience, over 27 years, in planning and operating large metropolitan area water systems. My academic background includes an undergraduate degree in civil engineering from the Virginia Military Institute and a graduate degree in public administration from George Washington University.

2. I attended the public hearings on February 22, 2000 before the House and Senate Committees to which the "Potomac River Protection Bills," Senate Bill 729, and House Bill 395 had been referred. J.L. Hearn, the Director of the Water Management Administration for the Maryland Department of Environment ("MDE"), testified that MDE supported both bills with some minor amendments. Mr. Hearn is the Maryland official who signed the ruling dated December 12, 1997 that denied the Authority's waterway construction permit, and he is the person who, thereafter, declined on behalf of his superiors in Maryland State government even to discuss the terms of any of several settlement proposals advanced by the Authority.

3. Prior to the hearing in the House Committee, I spoke with Mr. Hearn about S.B. 729. During our conversation, Mr. Hearn was asked – if the Van Hollen Bill were passed – whether MDE would issue a waterway construction permit for the Authority's project subject to the limitations set forth in that Bill. Mr. Hearn said he believed that MDE would not issue the permit even for a project that was permitted by the Bill because of the positions that had already

been taken against our project by his superiors. I understood him to mean Maryland Governor Glendening and Secretary of Environment Nishida.

4. I am familiar with the three studies referenced in both versions of the bill. Although the completion of these studies and their presentation to the General Assembly allegedly provides the justification for a new moratorium on construction of water intakes, to the best of my knowledge, none of them addresses any environmental or water supply issue implicated in the Authority's offshore intake project.

5. The Authority's proposed offshore intake project will not increase the Authority's capacity to withdraw water from the Potomac River. The capacity of the offshore intake (approximately 300 million gallons a day ("MGD")) would be 25% smaller than the capacity of the Authority's *existing* shoreline intake (approximately 400 MGD).

6. However, both H.B. 395 and S.B. 729 impose a moratorium on water intake construction that would limit the capacity of the Authority's proposed offshore intake to 205 MGD (the amount of the existing appropriation permit plus 5 million gallons a day). This limitation would frustrate the Authority's plan to construct one offshore intake to supply all its future Potomac River demand (300 MGD), and require the Authority to undertake in-river construction for a second time to enlarge the pipeline in the future (duplicating effort and costs) to complete its plan. While S.B. 729 on its face would permit the Authority to have a replacement offshore intake that is no larger than the Authority's existing intake during the study moratorium, the requirement for a physical component in the pipe to limit water capacity imposes additional, unnecessary costs on the project and ratepayers and, in my view, gives Maryland dangerous authority to restrict the water supply of Northern Virginia.

7. In any case, it is my expectation, as recently confirmed by J.L. Hearn on February 22, 2000, above, that Maryland will continue to delay and impede the Authority's offshore intake project, regardless of the passage of H.B. 395 or S.B. 729, and regardless of results of the three studies referenced in those bills.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on: April 27, 2000

Charlie C. Crowder, Jr.

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STATE OF MARYLAND,

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ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

DECLARATION OF MARK KRONENTHAL, II

I, Mark Kronenthal, II, declare that the following facts are true:

1. I am an adult over 18 years of age, am of sound mind, and have personal knowledge of the facts stated in this Declaration.

2. I attended the public hearing on February 22, 2000, of the Senate Economic & Environmental Affairs Committee of the Maryland General Assembly, concerning Maryland Senate Bill 729.

3. The sponsor of S.B. 729, Senator Christopher Van Hollen, stated at the hearing that his legislation, like the bill he proposed the previous year, was "triggered by the fact that the State of Virginia came to the State of Maryland" to build a new drinking water intake in the Potomac River. Senator Van Hollen said that his bill would permit Virginia to have an offshore intake in the Potomac River, but that it would limit the intake capacity to 205 million gallons per day ("MGD"), rather than the 300 MGD capacity sought in the permit application. He stated that the purpose of this limitation was to make sure "they are not fueling more development on the Virginia side of the river, which has been out of control." He stated that a further purpose of his bill was that, since Virginia had sued Maryland in the Supreme Court to declare that Virginia had the right to withdraw water from the Potomac River without Maryland's consent, the limitation

on the intake capacity was necessary to prevent Virginia from withdrawing more water from the River in the future without first obtaining Maryland's prior approval.

4. At the conclusion of the hearing, Senator Clarence W. Blount, the Committee Chairman, remarked that if "Virginia and Maryland were independent states, we would be at war over this."

5. I have also listened to relevant portions of the official audio recordings of the proceedings of the Maryland Senate from March 16, March 17 and March 21, 2000. Those proceedings are available to the public on the Internet at http://mlis.state.md.us/asp/listen.asp. When S.B. 729 as approved by the Senate Committee on Economic and Environmental Affairs was introduced to the full Senate on March 16, 2000 (3/16/00 Senate Recording at 23:41), the floor sponsor said that "what it addresses is the question relating to the County of Fairfax and Virginia's application for a new intake pipe." (3/16/00 Senate Recording at 26:00).

6. S.B. 729 was laid over on March 16, 2000 (3/16/00 Senate Recording at 28:24-29:7), amended on March 17, 2000 (3/17/00 Senate Recording at 51:21, 52:25-58:32), and again on March 21, 2000 (3/21/00 Senate Recording at 1:37:00), to provide an exception (in section 1(c)) that would allow three affected Maryland entities (Pepco, Alleghany Power, and Westvaco) to be exempted from the Bill's prohibition on the construction of water intakes in the Potomac River.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on: 4/27/2000

Mark Kronenthal, II